

Tuesday, February 8, 2005

The Board met at its offices at 450 N Street, Sacramento, at 9:32 a.m., with Mr. Chiang, Chair, Mr. Parrish, Vice Chair, Ms. Yee and Mr. Leonard present, Ms. Mandel present on behalf of Mr. Westly in accordance with Government Code section 7.9.

CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARING

Boston Scientific Corporation, 244315

1997, \$777,045.00 Claim for Refund

For Claimant:

Derick J. Brannan, Representative

Joseph J. Mandell, Representative

Terence M. Corrigan, Taxpayer

For Franchise Tax Board:

Brian Miller, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether or not appellant was instantly unitary with Target Therapeutics as of the date of appellant's acquisition of Target Therapeutics in April 1997; or, in the alternative, whether the two corporations were unitary approximately three months later in July 1997.

Action: Upon motion of Ms. Mandel, seconded by Mr. Leonard and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board submitted the appeal for decision.

SALES AND USE TAX APPEALS HEARINGS

Intaglio Corporation, 87725

4-1-97 to 12-31-00, \$208,513.00 Claim for Refund

For Claimant:

Roger A. Weiler, Taxpayer

For Sales and Use Tax Department:

Randy Ferris, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether claimant performed fabrication of cylinders for consumers or instead the fabricated cylinders were resold prior to use.

Whether the claim should be granted pursuant to Revenue and Taxation Code section 6596 because of claimant's reliance on the Supplemental Decision and Recommendation issued for the prior audit period.

Action: Upon motion of Ms. Mandel, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board ordered that the claim be submitted for decision.

Hoffmann Homecare, Inc., 244385

1-1-00 to 3-31-03, \$9,715.70 Tax

For Petitioner:

Abe Golomb, Representative

For Sales and Use Tax Department:

Kevin Hanks, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: No disqualifying contributions were disclosed.

Issue: Whether the evidence shows that the audited taxable measure is excessive.

Tuesday, February 8, 2005

Action: Upon motion of Mr. Leonard, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision, granting the petitioner 30 days to file supporting documents, the Department 30 days to respond, and the Appeals Division 30 days thereafter to review the petitioner's supporting documents, the Department's response and provide its recommendation to the Board.

Pirooz and Judy S. Haghighi, 239666

1-1-00 to 9-30-02, \$6,105.96 Tax

For Petitioner:

Pirooz Haghighi, Taxpayer

For Sales and Use Tax Department:

Kevin Hanks, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether petitioners have provided sufficient evidence to support their contention that the observation tests did not properly reflect the nature of petitioners' business during the audit period.

Action: Upon motion of Ms. Mandel, seconded by Ms. Yee and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

Ayesh H. Ayesh, 235815

10-1-99 to 6-30-02, \$38,927.65 Tax, \$9,731.94 Fraud Penalty

For Petitioner:

George Fakhouri, Representative

For Sales and Use Tax Department:

Kevin Hanks, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether the audited markups are accurate.

Whether the audited amounts of total sales are excessive.

Whether the evidence supports adjustments to the audited costs of taxable and exempt sales.

Whether the evidence shows that the 25 percent penalty for fraud or intent to evade the tax is warranted.

Action: Upon motion of Ms. Mandel, seconded by Ms. Yee and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

Kathleen Lovell Lemons, 258455

1-1-00 to 3-31-00, \$3,465.26 Claim for Refund

For Claimant:

Douglas Murken, Attorney

For Sales and Use Tax Department:

Jeff Graybill, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether claimant's sales of medical cannabis were exempt from sales tax.

Whether claimant received misinformation qualifying for relief under Revenue and Taxation Code section 6596.

Whether claimant has a right to equitable relief from the Board on the grounds of alleged violation of her right to equal protection under the law.

Tuesday, February 8, 2005

Action: Upon motion of Ms. Mandel, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board ordered that the claim be submitted for decision.

PUBLIC HEARING

Property Taxes – State Assessee Presentations on Capitalization Rates & Other Factors Affecting Values

Stanley Siu, Chief, Valuation Division, Property and Special Taxes Department, made introductory remarks regarding 1) state assessee's presentations on capitalization rates and other factors and procedures affecting 2005-06 values of California state-assessed public utilities and railroads; and, 2) private railroad car assessee's presentations on factors and procedures affecting 2005-06 taxable values of private railroad cars.

Speakers: Peter Michaels, Cooper, White and Cooper, spoke on behalf of State-assessed gas/electric, intercounty pipeline and railroad companies.
Patrick Rosvall, Cooper, White and Cooper, spoke on behalf of State-assessed telephone companies.
Lance Hall, FMV Opinions, Inc., spoke regarding capitalization rates.

LEGAL APPEALS MATTERS, CONSENT

The Board deferred consideration of the following matter: *David M. Golumbic, 216561.*

With respect to the Legal Appeals Matters Consent Agenda, upon a single motion of Ms. Mandel, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board made the following orders:

David M. Golumbic, 216561

6-1-96 to 3-31-01, \$1,602.00 Tax, \$00.00 Failure to File Penalty

Action: The Board took no action.

Ibraim S. Razuck, 282686

June 3, 2004 Notice of Seizure and Forfeiture

Action: Determined that staff properly seized the cigarettes.

CORPORATE FRANCHISE AND PERSONAL INCOME TAX MATTERS, CONSENT

With respect to the Corporate Franchise and Personal Income Tax Matters Consent Agenda, upon a single motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board made the following orders:

Tuesday, February 8, 2005

Ken M. Aronovsky, 266622

2001, \$304.00 Tax, \$100.00 Late Filing Penalty

Action: Sustain the action of the Franchise Tax Board and impose a \$750.00 frivolous appeal penalty.

Robert S. and Tammy M. Dunn, 258755

2000, \$1,271.00 Assessment

Action: Modify the action of the Franchise Tax Board.

John Michael Fox, 240642

1999, \$7,997.00 Assessment

Action: Sustain the action of the Franchise Tax Board and impose a \$1,000.00 frivolous appeal penalty.

Kevin Richard Fuller, 246285

1998, \$1,309.00 Tax, \$257.25 Late Filing Penalty, \$261.80 Accuracy Related Penalty

Action: Sustain the action of the Franchise Tax Board.

Goerl Properties Company, 258581

2001, \$58.61 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

John Hysore, 260583, 263300, 268643

2000, \$3,839.92 Claim for Refund

2001, \$2,935.71 Claim for Refund

2002, \$5,197.00 Assessment

2003, \$5,928.00 Assessment

Action: Reverse the action of the Franchise Tax Board as to 2000 and 2001. In addition, sustain the action of the Franchise Tax Board as to 2002 and 2003.

Howard Marcus, 183969

1983, \$499.74 Assessment

Action: Sustain the action of the Franchise Tax Board.

Octavius and Araceli Quijada, 250136

1998, \$4,426.00 Claim for Refund

2000, \$3,372.00 Claim for Refund

2001, \$1.00 or more Claim for Refund

Action: Sustain the action of the Franchise Tax Board as to 1998 and 2000. In addition, 2001 is dismissed for lack of jurisdiction.

Morris and Ann Schwartz, 268313

2000, \$2,674.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Tuesday, February 8, 2005

Raymond Voelkle, 246153

Alicia Oliger, 259797

1990, \$799.00 Tax, \$159.80 Accuracy Related Penalty

Action: Sustain the action of the Franchise Tax Board.

Donald L. Hughes, 236318

1989, \$2,448.76 Assessment

1990, \$1,461.60 Assessment

1991, \$2,443.71 Assessment

Action: Deny the petition for rehearing.

HOMEOWNER AND RENTER PROPERTY TAX ASSISTANCE MATTERS, CONSENT

With respect to the Homeowner and Renter Property Tax Assistance Matters Consent Agenda, upon a single motion of Ms. Mandel, seconded by Mr. Leonard and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board made the following orders:

Alicia Antunez, 269667

2003, \$922.72

Action: Modify the action of the Franchise Tax Board.

George Brent, 268783

2003, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Sheryl Gaspers-Martin, 264485

2003, \$340.00

Action: Sustain the action of the Franchise Tax Board.

E. H. Schenk, 260769

2003, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Connie Wong, 242324

2002, \$241.40

Action: Deny the petition for rehearing.

SALES AND USE TAX MATTERS, REDETERMINATIONS, RELIEF OF PENALTIES AND DENIALS OF CLAIMS FOR REFUND, CONSENT

With respect to the Sales and Use Tax Matters, Redeterminations, Relief of Penalties and Denials of Claims for Refund, Consent Agenda, upon a single motion of Mr. Leonard, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Ms. Mandel not participating in accordance with Government Code section 87105 in *Wells Fargo Financial Leasing, Inc.*, 290771, the Board made the following orders:

Tuesday, February 8, 2005

The C.I.T. Group/Equipment Financing, 268624

4-1-99 to 3-31-02, \$111,691.00

Action: Approve the redetermination as recommended by staff.

Price Auto Outlet of California, Inc., 261344

7-1-98 to 6-30-01, \$226,978.52

Action: Approve the redetermination as recommended by staff.

Softmart Commercial Services, Inc., 263587

4-1-99 to 6-30-02, \$57,455.88

Action: Approve the redetermination as recommended by staff.

Transamerica Business Credit Corporation, 235173

10-1-99 to 12-31-02, \$167,584.10

Action: Approve the redetermination as recommended by staff.

Penhall Company, 266729

10-1-00 to 9-30-03, \$50,227.87

Action: Approve the redetermination as recommended by staff.

Wells Fargo Financial Leasing, Inc., 290771

4-1-04 to 6-30-04, \$56,075.30

Action: Approve the relief of penalty as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 87105.

USB Leasing LT., 293149

4-1-04 to 6-30-04, \$94,412.10

Action: Approve the relief of penalty as recommended by staff.

Comp USA, Inc., 17115

7-1-92 to 3-31-96, \$115,355.75

Action: Approve the denial of claim for refund as recommended by staff.

Intevac, Inc., 271017

10-1-02 to 3-31-03, \$53,845.00

Action: Approve the denial of claim for refund as recommended by staff.

Carmel Financial Corporation, Inc., 156338

10-1-98 to 11-30-01, \$171,337.00

Action: Approve the denial of claim for refund as recommended by staff.

Phillips Plastics Corporation, 190713

7-1-96 to 12-31-00, \$65,955.38

Action: Approve the denial of claim for refund as recommended by staff.

Tuesday, February 8, 2005

Inacom Corporation, 241085

4-1-00 to 12-31-00, \$176,153.36

Action: Approve the denial of claim for refund as recommended by staff.

SALES AND USE TAX MATTERS, CREDITS, CANCELLATIONS AND REFUNDS, CONSENT

With respect to the Sales and Use Tax Matters, Credits, Cancellations and Refunds, Consent Agenda, upon a single motion of Mr. Leonard, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Ms. Mandel not participating in accordance with Government Code section 87105 in *GE Smallworld (US), Inc., 258695*; and, *K-B of California, Inc., 287644*; the Board made the following orders:

P.J.N. Consultants, Inc., 292973

7-1-00 to 6-30-03, \$69,221.02

Action: Approve the credit and cancellation as recommended by staff.

GE Smallworld (US), Inc., 258695

1-1-00 to 12-31-02, \$183,864.90

Action: Approve the credit and cancellation as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 87105.

N.G.P. Motors, Inc., 285809

4-1-04 to 6-30-04, \$176,315.56

Action: Approve the refund as recommended by staff.

Dicon Fiberoptics, Inc., 209708

7-1-00 to 9-30-03, \$60,244.60

Action: Approve the refund as recommended by staff.

Harco Leasing Company, Inc., 289627

4-1-99 to 3-31-02, \$66,995.77

Action: Approve the refund as recommended by staff.

Josten's, Inc., 284812

4-1-04 to 6-30-04, \$652,064.68

Action: Approve the refund as recommended by staff.

Americold Corporation, 287965, 207122

10-1-01 to 6-30-04, \$63,670.84

Action: Approve the refund as recommended by staff.

Herff Jones, Inc., 253680

7-1-03 to 12-31-03, \$58,771.41

Action: Approve the refund as recommended by staff.

Tuesday, February 8, 2005

Lanier Worldwide, Inc., 287942

10-1-02 to 12-31-02, \$53,747.95

Action: Approve the refund as recommended by staff.

Schieffelin Partner, Inc., 195930

7-1-99 to 12-31-03, \$547,267.18

Action: Approve the refund as recommended by staff.

WYKO Corporation, 207099

7-1-02 to 9-30-02, \$59,657.23

Action: Approve the refund as recommended by staff.

Ixia Communications, 254265, 221953

1-1-01 to 12-31-03, \$208,266.01

Action: Approve the refund as recommended by staff.

Zappos.Com, Inc., 288175

4-1-04 to 6-30-04, \$98,322.22

Action: Approve the refund as recommended by staff.

East & West Alum Craft, Ltd., 289744

4-1-01 to 3-31-04, \$92,707.30

Action: Approve the refund as recommended by staff.

Superior Exhibits & Design, Inc., 214588

7-1-01 to 9-30-02, \$75,796.93

Action: Approve the refund as recommended by staff.

Union Oil Company of California, 288862

1-1-93 to 6-30-97, \$1,357,844.83

Action: Approve the refund as recommended by staff.

The Valspar Corporation, 288205

1-1-00 to 12-31-02, \$123,239.01

Action: Approve the refund as recommended by staff.

K-B of California, Inc., 287644

1-1-04 to 6-30-04, \$61,997.76

Action: Approve the refund as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 87105.

Wescom Credit Union, 287946

4-1-04 to 6-30-04, \$81,117.47

Action: Approve the refund as recommended by staff.

Tuesday, February 8, 2005

Americredit Financial Service, Inc., 253679

10-1-03 to 12-31-03, \$1,417,983.40

Action: Approve the refund as recommended by staff.

Top Auto Finance, Inc., 289943

10-1-02 to 6-30-04, \$116,634.46

Action: Approve the refund as recommended by staff.

Bay Federal Credit Union, 243844

7-1-00 to 12-31-03, \$88,319.78

Action: Approve the refund as recommended by staff.

Apollo Information Systems Corporation, 289290

7-1-04 to 9-30-04, \$60,933.44

Action: Approve the refund as recommended by staff.

Heritage Community Credit Union, 286400

4-1-04 to 6-30-04, \$58,520.36

Action: Approve the refund as recommended by staff.

SPECIAL TAXES MATTERS, RELIEF OF PENALTIES AND DENIALS OF CLAIMS FOR REFUND, CONSENT

With respect to the Special Taxes Matters, Relief of Penalties and Denial of Claim for Refund, Consent Agenda, upon a single motion of Ms. Mandel, seconded by Ms. Yee and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board made the following orders:

American Procurement & Logistics Company, 272550

6-2-04 to 6-30-04, \$103,512.60

Action: Approve the relief of penalty as recommended by staff.

Less Hassle, Inc., 89000961070

1-1-92 to 12-31-93, \$59,072.53

Action: Approve the Denials of Claims for Refund as recommended by staff.

SPECIAL TAXES MATTERS, REFUNDS, CONSENT

With respect to the Special Taxes Matters, Refunds, Consent Agenda, upon a single motion of Mr. Leonard, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee and Mr. Leonard voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board made the following orders:

Tuesday, February 8, 2005

Aetna Life Insurance Company, 288825

1-1-03 to 12-31-03, \$977,585.20

Action: Approve the refund as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

Conseco Life Insurance Company, 269680

1-1-01 to 12-31-02, \$148,840.43

Action: Approve the refund as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

**CORPORATE FRANCHISE AND PERSONAL INCOME TAX MATTERS,
ADJUDICATORY**

Clayinvest, Inc., 249945

1997, \$427,627.77 Assessment

Considered by the Board: December 15, 2004

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: (Motion expunged at the March 9, 2005 Board meeting.)

Scott R. and Judith E. Martin, 253561

1999, \$9,399.00 Assessment

Considered by the Board: December 15, 2004

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: (Motion expunged at the March 9, 2005 Board meeting.)

Terry W. and Dawn W. Williamson, 241485

1993, \$4,228.56 Claim for Refund

Considered by the Board: December 15, 2004

Contribution Disclosures pursuant to Government Code section 15626: No contribution disclosure forms were filed.

Action: (Motion expunged at the March 9, 2005 Board meeting.)

Mercury General Corporation, 145450

1993, \$1,924,582.16 Assessment

1994, \$1,593,504.39 Assessment

1995, \$1,936,025.87 Assessment

1996, \$2,131,411.09 Assessment

Considered by the Board: June 25, 2003

Contribution Disclosures pursuant to Government Code section 15626: No disqualifying contributions were disclosed.

Action: (Motion expunged at the March 9, 2005 Board meeting.)

Sherrie D. Haney, 246253

1993, \$2,666.00 Claim for Refund

Considered by the Board: December 15, 2004

Tuesday, February 8, 2005

Contribution Disclosures pursuant to Government Code section 15626: No contribution disclosure forms were filed. The Members noted that their records disclosed no contributions from this taxpayer, his agent or participants.

Action: Upon motion of Mr. Leonard, seconded by Ms. Mandel and unanimously carried, Mr. Chiang, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Parrish not participating, the Board adopted a decision sustaining the action of the Franchise Tax Board.

HOMEOWNER AND RENTER PROPERTY TAX ASSISTANCE MATTERS, ADJUDICATORY

Pun Loi Wong, 262990

2003, \$400.00

Considered by the Board: December 15, 2004

Contribution Disclosures pursuant to Government Code section 15626: No contribution disclosure forms were filed. The Members noted that their records disclosed no contributions from this taxpayer, his agent or participants.

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board adopted a decision adopted a decision sustaining the action of the Franchise Tax Board.

SALES AND USE TAX MATTERS, REFUNDS, ADJUDICATORY

Michael Sun, 267107

4-1-96 to 10-31-02, \$60,778.84

Considered by the Board: December 15, 2004

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Ms. Mandel, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board approved the refund as recommended by staff.

SPECIAL TAXES MATTERS, REFUNDS, ADJUDICATORY

MV Transportation, 245295

10-1-00 to 6-30-03, \$213,553.97

Considered by the Board: December 15, 2004

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Mr. Leonard, seconded by Ms. Yee, and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board approved the refund as recommended by staff.

Ultramar, Inc., 293338

4-1-91 to 3-31-94, \$99,125.93

Considered by the Board: September 21, 2004

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Tuesday, February 8, 2005

Action: Upon motion of Mr. Leonard, seconded by Ms. Yee and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee and Mr. Leonard voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board approved the refund as recommended by staff.

Exxon Mobil Corporation, 246438, 288967

5-1-99 to 10-31-99, \$1,060,463.46

Considered by the Board: August 14, 2001

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Mr. Leonard, seconded by Ms. Yee and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee and Mr. Leonard voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board approved the refund as recommended by staff.

CHIEF COUNSEL MATTERS

PROPERTY TAX

Consideration of Findings and Decision

Covad Communications Company (7706), 269509

2004, \$68,200,000.00 Unitary Value, \$6,820,000.00 Penalty

Action: Upon motion of Ms. Yee, seconded by Mr. Leonard and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board approved the findings and decision as recommended by staff.

OTHER CHIEF COUNSEL MATTERS

Implementation of Limited Peace Officer Status

Jean Ogrod, Acting Chief Counsel, reported on the implementation of limited peace officer status (Exhibit 2.1).

Action: Upon motion of Mr. Parrish, seconded by Ms. Mandel, and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board approved the continuation of Limited Peace Officer status for another six-month period as recommended by staff.

Exhibits to these minutes are incorporated by reference.

Tuesday, February 8, 2005

ADMINISTRATIVE SESSION

ADMINISTRATIVE MATTERS, CONSENT

With respect to the Administrative Matters, Consent Agenda, upon a single motion of Mr. Leonard, seconded by Ms. Yee, and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board made the following orders:

Action: Adopt the following resolutions extending its best wishes on their respective retirements and its appreciation for their service to the State Board of Equalization and the State of California (Exhibit 2.2).

Janet Prezia, Associate Tax Auditor, Van Nuys District Office
Kirsten H. Steen, Business Tax Compliance Specialist, Special Procedures
Section, Headquarters

Action: Approve the Board Meeting Minutes of November 4, 2004.

Action: Approve the 2005 Timber Advisory Committee Membership (Exhibit 2.3).

OTHER ADMINISTRATIVE MATTERS

Executive Director's Report

Ramon Hirsig, Executive Director, introduced Jerri Dale, Chief, Customer and Taxpayer Services Division, who reported on the electronic services update (Exhibit 2.4).

Mr. Hirsig, then introduced David Gau, Deputy Director, Property and Special Taxes Department, who reported on training for members of assessment appeals boards (Exhibit 2.5).

Approval of Finance Letters

Raye Zentner, Deputy Director, Administration Department, made introductory remarks regarding the approval of 2005-06 finance letters to be sent to the Director of Finance (Exhibit 2.6).

Action: Upon motion of Ms. Yee, seconded by Mr. Leonard and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board approved Finance Letters No. 1, *Out-of-State Legal Cases*, and No. 3, *Revised Alternative Cigarette Tax Stamps Project*, as submitted by staff, and No. 2, *Consumer Use Tax Section Revenue Enhancement*, adding a placeholder of workload statistics information for justification of permanent positions, and directed staff to provide an update on this modification at the March meeting.

Tuesday, February 8, 2005

**FINAL ACTION ON CORPORATE FRANCHISE AND PERSONAL INCOME TAXES
HEARING HELD FEBRUARY 8, 2005**

Boston Scientific Corporation, 244315

Final Action: Mr. Leonard moved to reverse the action of the Franchise Tax Board. The motion was seconded by Mr. Parrish but failed to carry, Mr. Parrish and Mr. Leonard voting yes, Mr. Chiang, Ms. Yee and Ms. Mandel voting no.

Ms. Mandel moved the Franchise Tax Board's alternative that the appellant was unitary with Target Therapeutics as of July 1, 1997. The motion was seconded by Ms. Yee. Ms. Mandel withdrew her motion.

Upon motion of Mr. Parrish, seconded by Mr. Leonard and duly carried, Mr. Chiang, Mr. Parrish and Mr. Leonard voting yes, Ms. Yee and Ms. Mandel voting no, the Board adopted a decision that the appellant was unitary with Target Therapeutics as of July 31, 1997.

**FINAL ACTION ON SALES AND USE TAX APPEALS HEARING HELD
FEBRUARY 8, 2005**

Intaglio Corporation, 87725

Final Action: Upon motion of Ms. Mandel, seconded by Ms. Yee and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board ordered that the claim be redetermined as recommended by the Appeals Division.

SALES AND USE TAX APPEALS HEARINGS

Roger Allen Hansel, 214642

7-1-99 to 3-31-02, \$38,576.39 Tax, \$4,060.40 Negligence Penalty

For Petitioner: Appearance Waived

For Sales and Use Tax Department: Kevin Hanks, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether the protested taxable sales should be adjusted for bad debts.
Whether petitioner has provided evidence that the negligence penalty should be deleted.

Action: Upon motion of Ms. Mandel, seconded by Ms. Yee and unanimously carried, Mr. Chiang, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Parrish abstaining, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

Great Mall Carpet, Inc., 219576

1-1-99 to 12-31-01, \$24,232.16 Tax, \$00.00 Failure to File Penalty, \$00.00 Negligence Penalty

For Petitioner: Appearance Waived

For Sales and Use Tax Department: Kevin Hanks, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: No contribution disclosure forms were filed. The Members noted that their records disclosed no contributions from this taxpayer, his agent or participants.

Issues: Whether the evidence supports further adjustments for tax-paid purchases resold.

Tuesday, February 8, 2005

Whether petitioner presented sufficient evidence to warrant an adjustment for bad debts.

Action: Upon motion of Ms. Mandel, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

**FINAL ACTION ON SALES AND USE TAX APPEALS HEARINGS HELD
FEBRUARY 8, 2005**

Piروز and Judy S. Haghighi, 239666

Final Action: Upon motion of Ms. Mandel, seconded by Ms. Yee and duly carried, Mr. Chiang, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Parrish voting no, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

Ayesh H. Ayesh, 235815

Final Action: Mr. Parrish moved to reduce the fraud penalty to negligence, otherwise the petition be redetermined as recommended by the Appeals Division. The motion was seconded by Mr. Leonard but failed to carry, Mr. Parrish and Mr. Leonard voting yes, Mr. Chiang, Ms. Yee and Ms. Mandel voting no.

Upon motion of Ms. Mandel, seconded by Ms. Yee and unanimously carried, Mr. Chiang, Ms. Yee and Ms. Mandel voting yes, Mr. Parrish and Mr. Leonard abstaining, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

Kathleen Lovell Lemons, 258455

Final Action: Ms. Yee moved that the claim be granted. The motion failed for lack of a second.

Upon motion of Ms. Mandel, seconded by Mr. Parrish and duly carried, Mr. Chiang, Mr. Parrish, Mr. Leonard and Ms. Mandel voting yes, Ms. Yee voting no, the Board ordered that the claim be redetermined as recommended by the Appeals Division.

Upon motion of Ms. Yee, seconded by Mr. Leonard and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board ordered that the issuance of seller's permits for the purpose discussed in this case be reviewed at the Business Taxes Committee.

The Board adjourned at 12:30 p.m.

The foregoing minutes are adopted by the Board on May 25, 2005.

Note: The following case was removed from the calendar prior to the meeting: *Medsearch, Inc.*, 253647.

Tuesday, February 8, 2005